

Copies to: Patrick M. Baker (*via overnight and first class mail*)
Theresa C. Clarkson, Esq. (*electronically and via first class mail*)
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On October 10, 2007, the Enforcement Department filed a Request for Default Hearing, and on November 15, 2007, filed a Statement of Affirmation and Sanctions Memorandum. Respondent did not file a response. The Panel Chair, presiding without convening a full Disciplinary Panel, pursuant to Article V, Section 1(b)(1) of the Exchange Constitution, held a default hearing on November 29, 2007. Respondent did not appear at the hearing and was not represented.

To establish an evidentiary basis for the charges, and to demonstrate its efforts to serve Respondent, the Exchange submitted a Statement of Affirmation from Theresa C. Clarkson, Staff Attorney for the Exchange, a Pre-Hearing Submission and 86 supporting exhibits.

II. Jurisdiction

From July 2004 until July 2006, Respondent was a Member of the Exchange, and a sole proprietor (SP) and registered broker-dealer at the Exchange. Earlier, between January 2003 and June 2004, Respondent was a Member of the Exchange and was employed as a specialist by AGS Specialists, LLC.

Respondent terminated his Exchange membership on or about July 20, 2006. On July 21, August 9 and October 17, 2006, the Exchange sent letters to Respondent, pursuant to Article V, Section 6 of the Exchange Constitution and Exchange Rule 345(c), notifying him that the Exchange was retaining jurisdiction over him in connection with investigations regarding the matters that are the subject of the Statement of Charges. Accordingly, the Exchange retained jurisdiction to institute these proceedings against Respondent.

III. Respondent's Default

The Exchange sent the Statement of Charges to Respondent on July 9, 2007, by both certified and first class mail to his mailing address as listed in the Central Registration

Depository (CRD address). On August 10, 2007, the Exchange sent another letter to Respondent at his CRD address by certified mail, along with the Statement of Charges, informing Respondent that if he did not file an Answer, Enforcement would proceed with a default hearing against him.

On September 14, 2007, the Exchange sent another letter to Respondent by certified mail and first class mail, along with the Statement of Charges. The Exchange sent this letter to Respondent's CRD address and also to a possible new address listed on the outside of an earlier mailing that had been returned by the Postal Service. Respondent did not file an answer to the Statement of Charges.

On October 10, 2007, the Exchange filed a Request for Default Hearing, and sent copies of the Request by certified mail and first class mail to Respondent at the CRD address and the new address. Respondent did not respond to the Request for Default Hearing and did not participate in the default hearing held on November 29, 2007.

The Exchange's mailings of the Statement of Charges to Respondent's CRD address and the new address constitute proper service under Article V, Section 1(b)(6) of the Exchange Constitution. By failing to answer or otherwise respond to the Statement of Charges, Respondent defaulted.

IV. Findings of Fact and Conclusions of Law

A. Failure to Respond (Case 05-370)

On April 7, April 25, and May 3, 2005, the Trading Analysis Department (TA) of the FINRA Amex Regulation Division, on behalf of the Exchange, in the course of a substantive review of the SP's Anti-Money Laundering (AML) Procedures, Written Supervisory Procedures (WSPs), Insider Trading and Securities Fraud Enforcement Act (ITSFEA) Procedures and AML

Attestation, sent Respondent, as SP, a request that he complete an enclosed WSP Matrix for TA's review. TA sent the requests by certified mail to Respondent's CRD address, and received receipts for the April 7 and April 25 mailings signed by Respondent. In addition, on May 3, 2005, TA called an office telephone number for Respondent and left a voicemail message regarding the May 3 request. Nevertheless, Respondent did not provide a completed WSP Matrix in response to any of these requests.

On July 25, 2006, Enforcement sent Respondent, via certified mail and regular mail to his CRD address, a request that he provide: (1) a completed WSP Matrix, and (2) copies of all documents that evidenced the SP's implementation and enforcement of its supervisory system and procedures, as set forth in the SP's WSPs, with regard to the areas included in the WSP Matrix and applicable to the SP's business during December 2004, accompanied by a brief description explaining how each document was used in the supervisory process and the parameters used to generate the relevant exception reports. Because the request was sent to Respondent at his CRD address, he is deemed to have received it. Nevertheless, he failed to respond.

By failing to respond to the requests for information describe above, Respondent violated Exchange Rule 31.

B. Failure to Respond and Inadequate Procedures (Case No. 06-434)

On January 30, 2006, after reviewing the SP's AML Procedures and Written Compliance Procedures (WCPs), TA sent Respondent a Letter of Caution (LOC) noting various deficiencies in the SP's AML Compliance Program and in WCPs with regard to order handling, short sales, intra-day comparison, and books and records. In the LOC, TA recommended modifications to the SP's AML Procedures and WCPs to address the deficiencies. The LOC instructed

Respondent to respond to the LOC by February 13, 2006, and in the response to (a) represent that the SP had revised its AML Procedures and WCPs to address the deficiencies identified by TA, (b) indicate the date on which the revised procedures were implemented, (c) represent that the SP was implementing all of its WCPs, (d) state the date when the SP began implementing all of its WCPs, and (e) state that the revised procedures and evidence of their implementation were available for review by TA upon request. TA sent the LOC to Respondent at his CRD address, and he is deemed to have received it. Respondent failed to provide a response as requested by TA.

After Respondent failed to provide a timely response to the January 30, 2006, LOC, TA contacted him. Respondent represented that he had not received the January 30 LOC, so TA sent Respondent a second LOC on February 17, 2006, noting the same deficiencies and directing Respondent to provide the same information, by February 22, 2006. Respondent acknowledged, by telephone, that he had received the request. Nevertheless, he failed to provide the requested response.

On February 24, 2006, TA sent Respondent, by facsimile and certified mail to his CRD address, a third LOC reiterating the deficiencies and requesting the same responses set forth in the first two LOCs. The third LOC required Respondent to provide the requested response by March 1, 2006, but he failed to do so.

On October 24, 2006, Enforcement sent a letter to Respondent at his CRD address noting his failure to respond to TA's January 30, February 17 and February 24 LOCs. Enforcement's letter directed Respondent to provide a statement regarding the deficiencies and recommendations noted by TA in the LOCs by November 7, 2006. Respondent did not respond to Enforcement's letter.

By failing to respond to the requests for information contained in the three LOCs, Respondent violated Exchange Rule 31. By failing to create and implement adequate WCPs, as set forth in the LOCs, Respondent violated Exchange Rule 320, and by failing to develop and implement adequate AML Procedures, as set forth in the LOCs, Respondent violated Exchange Rule 432.

C. Failure to Respond in a Timely Manner and Failure to Pay Related Fine (Case No. 06-135)

On April 30, 2005, the Financial Regulation Department (FRD) of the FINRA Amex Regulation Division, on behalf of the Exchange, issued a deficiency letter to Respondent, as SP, for books and records deficiencies and order ticket deficiencies detected in its new member routine review. FRD sent the deficiency letter to Respondent at his CRD address.

The deficiency letter requested that Respondent file a written response by May 15, 2005, describing the corrections he had made and the steps he had taken to prevent a recurrence of the problems documented by FRD. Respondent failed to provide a timely response to this deficiency letter.

On May 18, 2005, FRD sent Respondent, as SP, a second deficiency letter advising Respondent that his response to the first deficiency letter was due immediately. Respondent did not promptly provide a response. On July 25, 2005, Respondent sent FRD a response to the deficiency letters that was 41 business days late. By failing to respond to the deficiency letters in a timely manner, Respondent violated Exchange Rule 31.

On August 3, 2005, FRD sent Respondent at his CRD address a letter notifying him that FRD had imposed a minor rule violation fine, pursuant to Exchange Rule 590, in the amount of \$2,050 for his failure to respond to the May 18 letter in a timely manner. Respondent neither

contested the fine, as permitted under Rule 590, nor paid it. By failing to pay the fine, Respondent violated Article V, Section 4(h) of the Exchange Constitution.

D. Failure to File and Failure to File in a Timely Manner Quarterly Financial and Operational Combined Uniform Single (“FOCUS”) Reports and Annual Insider Trading and Securities Fraud Enforcement Act (“ITSFEA”) Forms 1 & 2, and Failure to Pay Related Fines (Case No. 06-135)

Respondent, as SP, failed to file his June Quarterly FOCUS Report in July 2005, as required. Respondent eventually filed the Report on September 13, 2005, 34 business days late. Pursuant to Exchange Rule 590, FRD imposed a \$1,700 fine for the late filing. Respondent neither contested the fine, nor paid it. Respondent, as SP, also failed to file his September Quarterly FOCUS Report in October 2005. Respondent eventually filed the Report on November 14, 2005, 14 business days late. For this late filing, FRD imposed a \$700 fine pursuant to Rule 590, which Respondent neither contested nor paid.

Respondent, as SP, failed to file his December Quarterly FOCUS Report in January 2006, as required, or at any time thereafter; failed to file his March Quarterly FOCUS Report in April 2006, as required, or at any time thereafter; and failed to file his Annual FOCUS Schedule I in January 2006, as required, or at any time thereafter. Respondent, as SP, failed to file his 2005 ITSFEA Forms 1 and 2 in January 2006, as required, or at any time thereafter.

By failing to timely file the June and September FOCUS Reports, and by failing ever to file the December FOCUS Report, the March FOCUS Report, the Annual FOCUS Schedule I, and the ITSFEA Forms, Respondent violated Exchange Rule 30. By failing to pay the fines imposed for his untimely FOCUS Reports, he violated Article V, Section 4(h) of the Exchange Constitution.

E. Continuity and Depth Violations (Case No. 05-226)

Respondent, while employed as a specialist by AGS:

- Violated Exchange Rules 170(b) and (d) in that he failed to maintain a fair and orderly market, in various respects, when executing orders in Peapack Gladstone (PGC) on August 6, September 22 and November 24, 2003; when executing orders in Citizens Holding Co. (CIZ) on December 16, 2003; when executing orders in Maui Land/Pineapple (MLP) on January 13 and 28, 2004; and when executing orders in American Vanguard Co. (AVD) on January 29, 2004.
- Violated Exchange Rule 170, Commentaries .01 and .02 in that he failed to participate in a manner that was reasonably necessary when he sold and purchased shares of MLP on January 28, 2004.
- Violated Exchange Rule 170, Commentary .03 in that he posted quotations, made for his own account, for PGC on August 6 and September 22, 2003, for MLP on January 13, 2004, and for AVD on January 29, 2004, such that transactions effected at his quoted price or within his quoted spread did not bear a proper relation to preceding transactions and anticipated succeeding transactions.

V. Sanctions and Publicity

Enforcement argues that a bar is the appropriate sanction for Respondent's numerous failures to respond to requests for information, and also for the overall pattern of violations shown. The Panel Chair agrees. While the Exchange has no sanction guidelines applicable to failure to respond violations, the FINRA Sanction Guidelines may be considered,¹ and for failure to respond to requests for information, they recommend a bar. FINRA Sanction Guidelines at 35

¹ *David Wong*, Exchange Act Release No. 45,426, 2002 SEC LEXIS 339, at *22 (Feb. 8, 2002).

(2007). Moreover, it is well established that a bar is the appropriate sanction for refusal to comply with a self-regulatory organization's requests for information. As the SEC recently explained:

A complete failure to respond to a request for information issued pursuant to Rule 8210 renders the violator presumptively unfit for employment in the securities industry because the self-regulatory system of securities regulation cannot function without compliance with Rule 8210 requests. "Because of limited Commission resources, Congress has given NASD and other securities industry self-regulatory organizations significant front-line responsibility in ensuring that broker-dealers and their associated persons are complying with applicable statutes, rules, regulations, and ethical obligations." Exchange Act Section 15A requires that a registered securities association such as NASD enforce compliance by its members and persons associated with its members with the Exchange Act, the rules thereunder, and the rules of the registered securities association. Each of the rules of the registered securities association, here NASD, must meet certain statutory purposes. The main ones are that an SRO rule be designed for the protection of investors. Thus, each NASD rule governing a broker-dealer has as a principal objective the protection of investors, and a violation of an NASD rule threatens investor harm.

NASD, however, lacks subpoena power; it must therefore "rely upon Procedural Rule 8210 in connection with its obligation to police the activities of its members and associated persons." Rule 8210 "provides a means, in the absence of subpoena power, for the NASD to obtain from its members information necessary to conduct investigations." NASD's lack of subpoena power thus renders compliance with Rule 8210 essential to enable NASD to execute its self-regulatory functions.

In responding to Rule 8210 requests, therefore, "[d]elay and neglect on the part of members and their associated persons undermine the ability of the NASD to conduct investigations and thereby protect the public interest." The failure to respond to NASD information requests frustrates NASD's ability to detect misconduct, and such inability in turn threatens investors and markets. To ensure the continued strength of the self-regulatory system, members and their associated persons who fail to respond in any manner to Rule 8210 requests should be barred (or expelled) unless there are mitigating factors sufficient to rebut the presumption that such violators present too great a risk to the markets and investors to be permitted to remain in the securities industry. Because we conclude that removing those who present such a risk is necessary to further "the Exchange Act's basic purpose of protecting public investors," a bar (or expulsion) in such circumstances -- a complete failure to respond and no mitigation -- has a remedial, and not a punitive, purpose.

In addition to protecting investors by barring individuals and firms who have already demonstrated a refusal to be investigated, failures to cooperate should be prevented, as NASD notes in its brief, “by the very real threat of a bar and expulsion.” The possibility of receiving a bar for a failure to cooperate may have a very specific deterrent effect on all current and future SRO members and associated persons. NASD members and associated persons who know of wrongdoing and are approached by NASD with requests for information as part of an investigation should be deprived of any incentive to fail to cooperate. The sanction for any misconduct an NASD investigation uncovers could be less than a bar, and wrongdoers should know that cooperation is their best chance of avoiding the bar that they will almost certainly receive for non-cooperation (in the absence of mitigating factors). The general deterrence effects of a bar and the threat of a bar are substantial.

Paz Securities, Inc., Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *10-15 (April 11, 2008) (footnotes omitted).

This analysis is equally applicable to failures to respond to requests for information from the Exchange. Moreover, as explained above, Respondent failed to respond to a number of requests, issued over an extended period, seeking information on a variety of important regulatory issues. For his failure to respond, therefore, a bar is the appropriate sanction.

It is also the appropriate penalty to address Respondent’s violations taken as a whole. The number and variety of violations, and the extended period over which they occurred, strongly suggest that Respondent is unable or unwilling to comply with the regulatory requirements of the Exchange.

The Chair further finds that the results of this disciplinary proceeding should be publicly disclosed, as provided in Rule 12 of the Exchange Rules on Disciplinary Proceedings.²

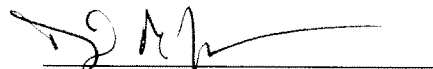
VI. Conclusion

Respondent violated Exchange Rules 30, 31, 170, 320, and 432; Rule 170 Commentaries .01, .02 and .03, and Article V, Section 4(h) of the Exchange Constitution. He is censured and

² Rule 12 exempts from publicity those cases in which the Panel finds that the offense “related solely to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors.” That exemption does not apply to the facts of this case.

permanently barred from Exchange membership, allied membership, approved person status, or association with any Exchange member or member organization, in any capacity.

FOR THE DISCIPLINARY PANEL

A handwritten signature in black ink, appearing to read 'DMF', written over a horizontal line.

David M. FitzGerald
Chair

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